IN THE HIGH COURT OF JUDICATURE AT BOMBY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 217 OF 1996

Sanjay Asarappa Sakhare,)
Age 25, Occ : Service,)
R/o. Abhayicha Wada,)
Opp to Bhole Transport,)
Pimpalgaon, Tal. Niphad,)
District Nasik) ....Petitioner.

V/s

State of Maharasthra) ....Respondent.

Mr. Sachin Dhakephalkar i/b Mr. P.K. Dhakephalkar for the Petitioner.

Mr. U.V. Nikam, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 10th November, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the Petitioner and the learned APP for the State.

2. By this Criminal Revision Application, Petitioner is challenging the Order passed by the Sessions Court, Nashik

in Criminal Appeal No.40 of 1995 whereby the Petitioner has been convicted for the offence punishable under section 304-A of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one month and to pay fine of Rs 4000/- and in default of payment of fine to suffer simple imprisonment for 15 days.

3. Brief facts are as follows:-

4. The original accused was driving a truck on 18/03/1993 and his truck dashed against a young boy of 4 years of age, who was crossing a road and, as a result of the said accident, the said boy died on the spot. The Petitioner immediately informed this incident to the Police Station and, accordingly, a complaint was lodged and, thereafter, a spot panchanama was prepared and the dead body was sent to civil hospital after inquest panchanama was made for postmortem. The statements of witnesses were recorded and the charge-sheet was filed. The Trial Court convicted the accused for an offence punishable under section 304-A IPC and sentenced him to suffer rigorous imprisonment for six months and to

pay fine of Rs 2000/- and in default of payment of fine to suffer simple imprisonment for two months. This sentence has been reduced to one month and fine amount was raised from Rs 2000/- to Rs 4000/- by the Sessions Court.

5. It is submitted by the learned Counsel appearing on behalf of the Petitioner that both the Courts below had erred in holding that the Petitioner was driving the vehicle in a rash and negligent manner. He submitted that there is a discrepancy in the statements of three eye witnesses. He submitted that the accident had taken place as a result of negligence on the part of the boy who suddenly ran across the road to meet his mother who was standing at the other end of the road and and, as a result of his mistake, the accident had taken place. He submitted that both the Courts below did not take into consideration the panchanama which clearly showed that the Petitioner had applied the brakes. He further submitted that all the witnesses were interested witnesses. He has taken me through the judgment and order of both the Courts below.

6. The scope and power of the High Court while exercising its jurisdiction under section 401 of the Criminal Procedure Code is very limited and it is quite well settled that this Court cannot reappreciate the evidence on record. This Court has to consider whether the finding given by both the Courts below is perverse or based on extraneous material or on conjectures or surmises.

7. In the present case, both the Courts below have considered the eye witness account. All the three eye witnesses have stated that the young boy of 4 years of age was sitting under a tree and while he was crossing the road, a truck came from the other side and that the driver was driving the vehicle in a rash and negligent manner and that his truck dashed against the young boy and he died on the spot. The learned Counsel appearing on behalf of the Petitioner submitted that there is a contradiction in the statements of all the three witnesses and that one one of the witnesses in her police statement has stated that the boy was killed under the rear right hand side wheel, whereas the other two witnesses have stated that the front side of the

truck dashed against the boy. However, it can be seen that this contradiction has not been brought on record by the defence and, therefore, this statement recorded by the Police is not admissible in evidence. Therefore, it is not possible to accept the submission made by the petitioner and the finding recorded by both the Courts below will have to be confirmed.

8. However, the Petitioner immediately and promptly reported the matter to the Police and that he did not run away from the scene and this factor will have to be taken into consideration while considering the sentence awarded to the Petitioner. Further, another mitigating circumstance is the fact that immediately after the incident, the Petitioner stopped his truck and tried to rescue the boy. However, the boy died on the spot and nothing could be done to save his life. The third aspect which also, in my view, is relevant is that the boy was alone and the road in question was 15 feet wide road. It is possible that the boy might have suddenly tried to cross the road to meet his mother who was on the other side and the petitioner might have been taken by

surprise. In these circumstances, the sentence will have to be reduced.

9. Accordingly the sentence of one month rigorous imprisonment is set aside and the petitioner is directed to pay a fine of Rs 4000/- and in default of payment of fine to suffer simple imprisonment for 15 days. Out of the amount of Rs 4000/-, an amount of Rs 3000/- should be paid to the mother of the victim boy and the said amount of Rs 4000/- be deposited by the Petitioner in the Trial Court within eight weeks from today. The order of the Sessions Court, Nashik is accordingly modified

10. Criminal Revision Application is partly allowed in the above terms.

V.M. KANADE, J.